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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISIONUNITED STATES OF AMERICA, Case No. 1:14cr225
Plaintiff, Akron, Ohio
Wednesday, September 3, 2014

vs.

THE KELLY PLATING COMPANY,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KATHLEEN B. BURKE
UNITED STATES DISTRICT MAGISTRATE JUDGE

CHANGE OF PLEA

APPEARANCES:

For the Government: Brad J. Beeson
Office of the U.S. Attorney
Suite 400
801 Superior Avenue, W
Cleveland, Ohio 44113
216-622-3850For the Defendant: Dean M. Valore
Valore & Gordillo
21055 Lorain Road
Fairview park, Ohio 44126
440-333-7330Michael G. Polito
Polito, Paulozzi, Rodstrom & Burke
21300 Lorain Road
Fairview Park, Ohio 44126
440-895-1234

1
2
3 Court Reporter:

Lori Ann Callahan, RMR-CRR
United States District Courthouse
Room 568
2 South Main Street
Akron, Ohio 44308
(330) 819-8676

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10 Proceedings recorded by mechanical stenography, transcript
11 produced by computer-aided transcription.

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1 P R O C E E D I N G S

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3 COURTROOM DEPUTY CLERK: The case before the court
4 carries Case Number 1:14Ccr225, United States of America
10:33:11 5 versus The Kelly Plating Company.

6 THE COURT: Good morning. Would counsel for the
7 United States please introduce themselves for the record?

8 MR. BEESON: For the United States, Brad Beeson.

9 THE COURT: All right. And counsel for the
10 defendant, would you please introduce themselves for the
11 record.

12 MR. VALORE: Good morning, Your Honor. Dean
13 Valore on behalf of the Kelly Plating Company and with me at
14 the trial table is Donald Kelly, the president and sole
10:33:34 15 shareholder of The Kelly Plating Company.

16 THE COURT: Good morning.

17 THE DEFENDANT: Good morning.

18 THE COURT: Mr. Valore, I have been informed that
19 The Kelly Plating Company wishes to plead guilty to Counts 1
20 and 2, I believe it is, of the indictment.

21 Is my understanding correct?

22 MR. VALORE: That is correct, Your Honor.

23 Mr. Kelly as a representative of the company is prepared to
24 enter a plea agreement before Your Honor this morning that
10:34:00 25 the United States Attorney's Office has prepared and we're

1 in agreement with all the terms, so we'll go over that now,
2 I think, at your pleasure.

3 THE COURT: All right. We will go through the
4 plea agreement, the provisions of the plea agreement and a
10:34:11 5 number of other things.

6 The first thing I need to do is to make sure that
7 the defendant consents to my jurisdiction in this matter.

8 Mr. Kelly, I understand that you are here as the
9 authorized representative of Kelly Plating Company and that
10:34:31 10 you are authorized to speak on behalf of Kelly Plating.

11 Is that correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. So with respect to the
14 consent to my jurisdiction, I have that document here,
10:34:45 15 Mr. Kelly, and I'll show you the second page of this. It
16 has some signature on it. The top signature on the
17 right-hand side appears to be yours.

18 Is that correct?

19 THE DEFENDANT: I believe so, Your Honor.

10:34:56 20 THE COURT: And, Mr. Valore, your signature is
21 underneath Mr. Kelly's.

22 Correct?

23 MR. VALORE: It is, Your Honor, and I witnessed
24 Mr. Kelly sign above mine.

10:35:03 25 THE COURT: Okay. And, Mr. Beeson, your signature

1 there, as well --

2 MR. BEESON: Yes, Your Honor.

3 THE COURT: -- on the left side. Okay.

4 Do you understand, Mr. Kelly, that the company,

10:35:13 5 The Kelly Plating Company, does have the right to offer up
6 its plea of guilty to the United States District Judge in
7 this case and that by consenting to my jurisdiction, you are
8 agreeing that -- to give up your right to enter the plea
9 before a United States District Judge and instead offer the
10 plea to me.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. And is that your wish on
14 behalf of Kelly Plating Company to consent to my
15 jurisdiction?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 Mr. Kelly, I'm going to just tell you right now
19 what we're going to be doing this morning. We -- we --
20 there's several purposes to this proceeding. The first is
21 to establish that the company that you represent, Kelly
22 Plating, is competent to make a plea. The second is to make
23 sure that the plea is free and voluntary. The third is to
24 understand that the company and you, as its representative,
25 understand the charges that have been made against the

1 company, the penalties that are associated with those
2 charges and the constitutional rights that the company will
3 be giving up by pleading guilty.

4 We will also ask both counsel for the United
10:36:31 5 States and yourself questions to determine whether there is
6 a factual basis for the plea, and finally, after we do all
7 those things, I will ask you on behalf of the company what
8 the company's plea is to the charges in the indictment.

9 I do want you to know, Mr. Kelly, that even though
10:36:50 10 the company has expressed an intent to plead guilty, the
11 company and you, on behalf of the company, have the right to
12 change your mind and to stand by the original plea of not
13 guilty at any time up until the end of this proceeding when
14 I ask you how the company pleads.

10:37:07 15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. During the proceeding
18 today, Mr. Kelly, I will be asking you a number of
19 questions. The court reporter who's here will be recording
20 my questions and your answers. You need to put your answers
21 in words because she cannot record a nod of the head or
22 other gesture.

23 If at any time you don't understand a question or
24 if at any time you wish to speak with your attorney,
10:37:33 25 Mr. Valore, please say so, because it is essential to a

1 valid plea that you understand on behalf of the company that
2 you understand each question before you answer.

3 None of my questions is intended to embarrass you
4 or the company. Rather, they are the -- for the purpose of
10:37:50 5 determining that you, on behalf of the company, that the
6 company is competent to enter a plea and that the plea is a
7 knowing and voluntary plea.

8 Do you understand those instructions?

9 THE DEFENDANT: Yes, Your Honor.

10:38:01 10 THE COURT: The company does have the right to
11 remain silent, and you, as its representative, have the
12 right to remain silent. You're not required to make a
13 statement, but anything you do say may be used against you.

14 Before I receive a guilty plea, there are a number
15 of questions that I will need to ask you to assure that the
16 company's plea is valid. By answering those questions, you
17 will be making statements against the interest of the
18 company, and you will necessarily have to incriminate the
19 company.

20 Do you understand that by proceeding here today
21 with a guilty plea, you will necessarily be giving up the
22 company's right to remain silent?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: The courtroom deputy clerk will now
10:38:49 25 swear Mr. Kelly, the representative of the defendant

1 company.

2 COURTROOM DEPUTY CLERK: If you could please stand
3 and raise your right hand.

4 (Defendant sworn.)

10:39:03 5 THE COURT: Mr. Kelly, you have now been sworn and
6 you are under oath to tell the truth. Your answers to my
7 questions will be subject to the penalties for perjury if
8 they are not truthful.

9 Do you understand those instructions?

10:39:15 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. I'm now going to ask a
12 number of questions that are for the purpose of determining
13 that the defendant and you, on behalf of the defendant,
14 understand -- are competent to understand the proceedings
10:39:31 15 and to enter a knowing plea.

16 First, please state your full name.

17 THE DEFENDANT: Donald James Kelly.

18 THE COURT: And how old are you, Mr. Kelly?

19 THE DEFENDANT: Fifty-four.

10:39:39 20 THE COURT: Okay. Are you a citizen of the United
21 States?

22 THE DEFENDANT: Yes.

23 THE COURT: And how far did you go in school,
24 Mr. Kelly?

10:39:46 25 THE DEFENDANT: Three years of college.

1 THE COURT: Okay. Where did you attend college?

2 THE DEFENDANT: Ohio State and Cleveland State.

3 THE COURT: Okay. And what were you studying?

4 Did you have a major?

10:39:55 5 THE DEFENDANT: General business courses.

6 THE COURT: Okay. And I'm going to ask you now
7 what kind of work you have done in the recent past, by which
8 I mean the last year or two, and just the nature of the
9 work, not -- not the name of the company or employer.

10:40:16 10 THE DEFENDANT: Metal coatings and steel cleaning.

11 THE COURT: Okay. And have you been in an
12 executive position with regard to those industries?

13 THE DEFENDANT: Yes, Your Honor. I sign the
14 checks.

10:40:29 15 THE COURT: Okay. All right. So you have some
16 management responsibility?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. And I take it from your
19 answers, Mr. Kelly, that you can both speak and understand
20 English.

21 Correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And that you are -- based on your
24 education, you are able to read and write in English
25 correct.

1 Is that correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. Do you know whether the company
4 has been previously convicted or pled guilty to any crime?

10:41:00 5 THE DEFENDANT: No, Your Honor.

6 THE COURT: All right. The answer is that you
7 don't believe so.

8 Is that correct?

9 THE DEFENDANT: I -- as far as any criminal
10 activity, no, Your Honor.

11 THE COURT: All right.

12 MR. VALORE: Your Honor, if I may, there was a --
13 there was a civil remedy worked out for the company with the
14 Northern -- Northeast Ohio Regional Sewer District regarding
10:41:20 15 some similar issues connected with the same case. The
16 company was not criminally prosecuted for that, but it
17 reached a civil remedy out of court.

18 THE COURT: Okay. And I was just looking to find
19 out if there was anything that would be affected by the
20 guilty plea here today that would be, you know, whether
21 there would be any adverse effect on the status of the
22 company with respect to any other matter by virtue of the
23 plea.

24 MR. BEESON: The only thing besides the terms of
25 the plea agreement, Your Honor, the company is subject to

1 potential disbarment as part of its guilty plea.

2 THE COURT: Okay. And maybe when we get to
3 discussing the penalties, I'll ask you about that again,
4 Mr. Beeson.

10:41:59 5 MR. BEESON: Okay.

6 THE COURT: Okay. Mr. Kelly, within the last
7 year, have you been treated for a mental illness, an alcohol
8 addiction or a drug addiction?

9 THE DEFENDANT: No, Your Honor.

10:42:08 10 THE COURT: And within the last 24 hours, have you
11 taken any medication, drugs or alcohol?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Okay. I know that you are here today,
14 Mr. Kelly, as the representative on behalf of the
15 corporation, that is, the defendant in the case. So I'm
16 going to ask you now whether you, in fact, have the
17 authority to speak on behalf of the corporation and to bind
18 the corporation to a plea of guilty.

19 THE DEFENDANT: Yes, Your Honor.

10:42:40 20 THE COURT: And do I understand correctly that you
21 are the president of Kelly Plating Company?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do I also understand that you are the
24 sole share -- sole owner of Kelly Plating Company?

10:42:51 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. And so your authority --
2 there's no question in your mind that you are authorized to
3 speak on behalf of the company and to bind the company.

4 Is that correct?

10:43:02 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. And, Mr. Valore, do you
7 have any concerns or doubts about Mr. Kelly's authority to
8 speak on behalf of the company and to bind the company?

9 MR. VALORE: No, none.

10:43:20 10 THE COURT: Mr. Beeson, do you have any concerns
11 about that?

12 MR. BEESON: No, Your Honor.

13 THE COURT: All right. Mr. Kelly, I'm just going
14 to ask you now to explain in your own words, if you can,
15 what you understand the purpose of this hearing to be.

16 THE DEFENDANT: There was a violation on our
17 property and that the -- it's my responsibility for anything
18 that happens on our property.

19 THE COURT: Okay. At the time of the arraignment
20 in this matter, the company was advised about its right to
21 counsel, and I don't know if you were the representative at
22 that time, Mr. Kelly, when the company was arraigned on
23 these charges?

24 THE DEFENDANT: Yes, Your Honor.

10:44:06 25 THE COURT: Okay. But I do want to advise you

1 again that the company has a right to be represented by an
2 attorney at every stage of the proceedings in this case. So
3 I do want to make sure that you understand -- do you
4 understand that the company has a right to counsel at every
10:44:19 5 stage of the proceeding?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: The company has retained Mr. Valore,
8 Mr. Dean Valore, who is here today as well as Mr. Polito, as
9 I understand it, to represent the company.

10:44:34 10 Is that correct, Mr. Kelly?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you understand that Mr. Valore
13 is the attorney for the company today?

14 THE DEFENDANT: That is -- yes, Your Honor.

10:44:45 15 THE COURT: Have you had enough time to discuss
16 the charges made against the company and the company's
17 response to those charges with Mr. Valore?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Have you told Mr. Valore
10:44:56 20 everything that you know about the case?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And everything that you believe that
23 is within the corporate knowledge of the defendant company,
24 have you discussed that with him?

10:45:08 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Are you completely satisfied
2 with the representation that your attorneys have given the
3 company and the advice that they have given the company?

4 THE DEFENDANT: Yes, Your Honor.

10:45:19 5 THE COURT: Okay. I'm now going to discuss with
6 you, Mr. Kelly, a number of constitutional rights that the
7 company does have that it will be giving up by pleading
8 guilty today. I'll describe each one of those rights to you
9 and ask you whether you understand -- whether you understand
10 the right and whether you understand that the company will
11 be giving up that right.

12 The first right that the company has is a right to
13 stand by its plea of not guilty and to require the
14 government to proceed to trial. The company has a right to
15 a trial, including the right to a trial by jury and
16 including the assistance of counsel at trial.

17 At trial, the company would be presumed to be
18 innocent. It would not have to prove that it was innocent.
19 Rather, the government would be required to prove the
20 company guilty by competent evidence beyond a reasonable
21 doubt as to each element of the offenses charged against the
22 company.

23 Do you understand the right to a trial that the
24 company has?

10:46:23 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And do you understand that by pleading
2 guilty, the company will be giving up that right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The company also has a right to
10:46:33 5 compulsory process. What that means is that if the case
6 were to go to trial, the company would have the right to
7 have the court issue subpoenas to require the attendance of
8 witnesses to testify on behalf of the company.

9 Do you understand the right to compulsory process?

10:46:48 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And do you understand that by pleading
12 guilty, the company will be giving up that right?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. The company also has the right
10:46:57 15 to confront witnesses. What that means is that if the case
16 were to go to trial, the company and you, as its
17 representative, would have the right to hear, to see, and to
18 cross-examine all witnesses that the government might
19 present against the company.

10:47:12 20 Do you understand that right?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And do you understand that by pleading
23 guilty, the company will be giving up that right?

24 THE DEFENDANT: Yes, Your Honor.

10:47:19 25 THE COURT: Now, I don't know that the company --

1 let me just ask counsel this question: Are there any Civil
2 Rights that the company would be giving up by pleading
3 guilty?

4 MR. BEESON: Not that I'm aware of, Judge.

10:47:39 5 MR. VALORE: No, Judge, not -- not any Civil
6 Rights.

7 THE COURT: All right. Thank you. I'm now going
8 to go over the nature of the charges and the possible
9 consequences of a guilty plea.

10:47:55 10 Mr. Valore, do you and Mr. Kelly have a copy of
11 the indictment in this case?

12 MR. VALORE: We do, Your Honor.

13 THE COURT: All right.

14 MR. VALORE: In fact, Judge, I don't know if you
15 want it now, I have the executed signed copy, original,
16 which is -- which Mr. Kelly and I have in front of us. I
17 don't know if you want me to turn that over to Your Honor
18 now.

19 THE COURT: Is that the plea agreement you're
20 referring to? Okay. We'll get to that in a few minutes.

21 MR. VALORE: Okay.

22 THE COURT: I'm talking about the indictment now
23 and the charges in the indictment. So do you have that and
24 have you had an opportunity to review that with Mr. Kelly?

10:48:29 25 MR. VALORE: I do, Your Honor, and we have gone

1 over this together. Mr. Kelly understands the maximum
2 possible statutory and guideline calculation sentencing
3 issues that are -- pertain to this indictment.

4 THE COURT: Okay. Mr. Kelly, you've been --
10:48:45 5 indicated that you intend to, on behalf of Kelly Plating
6 Company, to plead guilty to Counts 1 and 2 of the
7 indictment.

8 Count 1 charges the company with -- with a
9 conspiracy to violate the Clean Water Act in violation of
10:49:04 10 U.S. Code 18, Section 371.

11 Count 2 charges the company with a violation of an
12 approved pretreatment program in violation of 33, United
13 States Code, Section 1319(d)(2)(A).

14 I'm now --

10:49:24 15 MR. VALORE: Judge, I believe it's (c)(2)(A).

16 THE COURT: Oh, (c)(2)(A). You -- you are
17 correct. I'm misreading what I had written here. So Count
18 2 is a charge of the violation of 33, United States Code,
19 Section 1319(c)(2)(A), which is a violation of an approved
20 pretreatment program.

21 Mr. Kelly, have you discussed the charges in the
22 indictment to which the company intends to plead guilty?
23 Have you discussed those with the company's attorney,
24 Mr. Valore?

10:49:55 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And do you feel that you understand
2 the charges in the indictment?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: I'm going to go now through the
10:50:04 5 elements of the offenses charged in the indictment, and if
6 you want to follow along with that, those elements are set
7 forth in the plea agreement on page 3 in paragraph 8.

8 So I'll give you a minute to get there.

9 MR. VALORE: Okay, Judge.

10 THE COURT: The elements of the offense charged in
11 Count 1, which is the conspiracy count, conspiracy to
12 violate the Clean Water Act, there are three elements. The
13 first is that two or more persons conspired or agreed to
14 commit the crime of violating a requirement of an -- of an
10:50:43 15 approved pretreatment program.

16 The second element is that the defendant, which in
17 this case is Kelly Plating Company, knowingly and
18 voluntarily joined the conspiracy; and the third element is
19 that a member of the conspiracy did one of the overt acts
20 described in the indictment for the purpose of advancing or
21 helping the conspiracy.

22 Mr. Kelly, do you feel that you understand those
23 elements of the offense charged in Count 1 of the
24 indictment?

10:51:08 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. The elements of the offense
2 charged in Count 2 of the indictment, Count 2 charges the
3 violation of an approved pretreatment program. There are
4 three elements to that offense, as well.

10:51:23 5 The first is that the defendant, which in this
6 case is Kelly Plating Company, knowingly; second element is
7 violated any requirement of a pretreatment program, and the
8 third element is that the pretreatment program had been
9 approved under the Clean Water Act.

10:51:40 10 Mr. Kelly, do you understand those -- those
11 elements of Count 2 of the indictment?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Mr. Valore, have you gone
14 over the elements of the offenses with Mr. Kelly, and do you
10:51:54 15 believe he understands those elements?

16 MR. VALORE: Yes, I have, Judge.

17 THE COURT: All right. And you do believe he
18 understands?

19 MR. VALORE: Yes, I do.

10:52:01 20 THE COURT: All right. Mr. Beeson, I'm going to
21 ask you to recite the penalties associated with the charges
22 to which the company, Kelly Plating Company, intends to
23 plead guilty.

24 MR. BEESON: Under the first count, Your Honor,
10:52:15 25 the conspiracy charge, the maximum penalty is \$500,000 fine

1 and three years of probation and a \$400 special assessment.

2 RECORDER: I'm sorry. Can you talk more into the
3 microphone?

4 THE COURT: You may remain seated, Mr. Beeson. I
10:52:29 5 would say the same for everyone here. It's easier for the
6 recording --

7 MR. BEESON: Got it.

8 THE COURT: -- be made if you speak directly into
9 the microphone.

10:52:38 10 MR. BEESON: I'll -- I'll start from the beginning
11 then.

12 THE COURT: Okay.

13 MR. BEESON: The first count concerns conspiracy,
14 and the maximum penalty for that is a \$500,000 fine, three
10:52:51 15 years of probation and a \$400 special assessment. And in
16 Count 2 of the indictment, the maximum penalty is \$50,000
17 per day of violation, or \$500,000, whichever is larger,
18 three years probation and \$400 special assessment, Your
19 Honor.

20 THE COURT: All right. And is there any mandatory
21 minimum penalty for either one of the counts?

22 MR. BEESON: No, Your Honor.

23 THE COURT: Is there any forfeiture or restitution
24 that may be imposed in connection with that -- those counts?

25 MR. BEESON: There could be, Your Honor.

1 THE COURT: Okay. And is that -- is it forfeiture
2 or restitution or both?

3 MR. BEESON: Restitution, Your Honor.

4 THE COURT: Okay. And that would be restitution
10:53:38 5 pertaining to what, the cost of clean-up or --

6 MR. BEESON: Right. Which there isn't any in this
7 case, Your Honor.

8 THE COURT: Okay. Are there any applicable costs
9 that could be imposed on the company?

10 MR. BEESON: No, Your Honor.

11 THE COURT: Okay. Such as cost of prosecution
12 and --

13 MR. BEESON: There could be those, Your Honor, but
14 no cost in investigation.

10:53:59 15 THE COURT: All right. And I take it probably no
16 cost of incarceration in this particular case?

17 MR. BEESON: That's correct, Your Honor.

18 THE COURT: All right. Did we talk about a
19 special assessment? You did mention a \$400.

10:54:12 20 MR. BEESON: \$400 per count, Your Honor, because
21 they're both penalties.

22 THE COURT: Okay. And I think probation does not
23 apply to this case; am I correct?

24 Well, wait a second. There does. You did
10:54:25 25 indicate that, didn't you, three years probation?

1 MR. BEESON: Right. Maximum per count is three
2 years.

3 THE COURT: Okay. And supervised release does not
4 have any application to this case; is that correct,

10:54:35 5 Mr. Beeson?

6 MR. BEESON: No, it does not.

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And has anyone threatened The Kelly
14 Plating Company or threatened anyone else or forced the
10:55:01 15 company in any way to plead guilty?

16 THE DEFENDANT: No, Your Honor.

10:55:13 20 Is that correct?

21 THE DEFENDANT: Yes, Your Honor.

10:55:33 25 I'm now going to have you identify the agreement,

1 Mr. Kelly. This agreement has in the lower right-hand
2 corner of each page is a set of initials which appears to be
3 yours.

4 Are those your initials?

10:55:47 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And then on the last page of the
7 agreement, there are some signatures. It appears that your
8 signature is on the top line, Mr. Kelly.

9 Is that correct?

10:55:57 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And, Mr. Valore, your signature is the
12 second on that page, correct?

13 MR. VALORE: That's right, Judge.

14 THE COURT: And, Mr. Beeson, yours is the last
15 signature on that page.

16 Correct?

17 MR. BEESON: That's correct, Your Honor.

18 THE COURT: All right. So have you -- do you have
19 a copy of the plea agreement at the table, Mr. Valore?

10:56:15 20 MR. VALORE: We do, Your Honor. We have one in
21 front of us.

22 THE COURT: Okay. Mr. Kelly, did you have an
23 opportunity to read the plea agreement and to discuss it
24 with your attorney before you signed it on behalf of the
10:56:26 25 company?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you feel that you understand the
3 terms of the plea agreement?

4 THE DEFENDANT: Yes, Your Honor.

10:56:31 5 THE COURT: Okay. I'm now going to ask
6 Mr. Beeson, on behalf of the government, to state the
7 substance of the plea agreement with the exception of the
8 factual basis which we'll get to later on, and, Mr. Beeson,
9 you don't need to read the entire agreement, but just simply
10 to set forth the key -- the substance and the key terms of
11 the agreement.

12 MR. BEESON: The first couple of pages concern the
13 maximum penalties, Your Honor. The second page concerns the
14 maximum statutory penalty. The third page lays out the
10:57:06 15 elements of the offense. The fourth page concerns the --
16 whether this is the -- what type of an agreement this is, a
17 joint recommendation to the court.

21 In paragraph 16 on page 5, the parties also
22 recommend or will be recommending to the court that the
23 defendant make a community service payment in the amount of
24 \$25,000, and that will be to a charitable organization to be
10:57:44 25 presented to the court prior to sentencing.

1 And at paragraph 17, the parties also recommend
2 that the court sentence the defendant two years of
3 probation.

4 Following that is a waiver of the defendant's
10:58:02 5 rights, and the next couple of pages concern the factual
6 basis of the plea, Your Honor.

7 THE COURT: All right. Let me look and see if
8 there's anything else that -- we will go through the factual
9 basis in more detail later on. There are some provisions
10:58:20 10 after the factual basis, Mr. Beeson. Do you want to say
11 anything about those?

12 MR. BEESON: Yeah.

13 THE COURT: That starts at page 8.

14 MR. BEESON: Those begin at page 8. Those are
10:58:30 15 boilerplate, Your Honor, concern the consequences of
16 breaching the plea agreement, that this plea agreement isn't
17 binding on other jurisdictions, that Mr. Kelly is satisfied
18 with the assistance of Mr. Valore, that this is a voluntary
19 agreement and the last page on page 10, Your Honor, is the
20 statement by Mr. Kelly that he's the authority to enter into
21 this plea agreement on behalf of The Kelly Plating Company.

22 THE COURT: All right. Thank you, Mr. Beeson.

23 I want to go back to something we were talking
24 about, the potential penalties, and I meant to ask you about
10:59:05 25 something that you had referred to earlier, which was a

1 potential -- was it a debarment or something of that nature?

2 MR. BEESON: That's correct, Your Honor.

3 THE COURT: Do you want to describe that now?

4 MR. BEESON: After the company is sentenced, US

10:59:24 5 EPA has a debarment office and they will approach Kelly
6 Plating about possible debarment of the company from
7 government contract.

8 THE COURT: Okay. So, Mr. Kelly, you heard

9 Mr. Beeson's description of the potential penalties, and do
10 you understand that -- the potential penalties, as well as
11 the additional potential for debarment that Mr. Beeson has
12 mentioned?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Did I ask you, Mr. Kelly,
15 whether -- I think I did. I do want to ask now, Mr. Valore,
16 whether you agree with Mr. Beeson's description of the
17 substance of the plea agreement?

18 MR. VALORE: I do, Your Honor, in its entirety.

19 THE COURT: Okay. And, Mr. Kelly, do you agree
20 with Mr. Beeson's description of the plea agreement?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. Mr. Kelly, has anyone,
23 including either your attorney, the attorney for the United
24 States or the court, made any promise other than the
11:00:30 25 promises contained in the plea agreement in order to

1 persuade Kelly Plating to plead guilty?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. Now, I'm going to go over
4 a few matters regarding the sentencing. Mr. Beeson
11:00:53 5 described potential maximum penalties here. And I think
6 you've already indicated, Mr. Kelly, that you do understand
7 those. There isn't any potential prison term here so we
8 don't have to discuss that.

9 Have you had an opportunity, Mr. Kelly, to discuss
11:01:13 10 with Mr. Valore how the Sentencing Commission Guidelines
11 might apply in this case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. I'm going to direct your
14 attention now to paragraphs 9 through 17 of the plea
11:01:29 15 agreement and those start on page 3. Do you understand,
16 Mr. Kelly, that those paragraphs discuss the application of
17 the sentencing guidelines for this case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: I'm going to direct your attention
11:01:50 20 specifically to paragraph 12 of the plea agreement which
21 appears on page 4, Mr. Kelly. And that paragraph is
22 captioned "Sentencing recommendations not binding on the
23 court." Mr. Beeson earlier described the agreement of the
24 parties with regard to the potential fine in this case and a
11:02:12 25 potential community service payment.

0 Do you understand, Mr. Kelly, that if the court
1 does not accept the recommendations that the parties are --
2 will make to the court, that Kelly Plating will not be able
3 to withdraw its guilty plea?

14 THE DEFENDANT: Yes, Your Honor.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. And do you understand that
23 there will be a presentence report prepared in this case and
24 that the court will determine the sentencing guideline range
25 that applies to the case after that report has been prepared

1 and reviewed by the parties?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you understand that in this --

4 and this goes along with what we've talked about in

11:03:58 5 paragraph 12, that the court may impose any sentence that is

6 permitted or provided by law, notwithstanding any

7 recommendation that is contained in the plea agreement?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand that the court alone

11:04:16 10 will decide the applicable sentencing range, whether there

11 is any basis to depart from that range or to impose a

12 sentence outside of the guideline range and what sentence to

13 impose?

14 THE DEFENDANT: Yes, Your Honor.

11:04:28 15 THE COURT: In other words, the sentence that the

16 court imposes may be different from any estimate that your

17 attorney may have given you.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

11:04:36 20 THE COURT: I'm now going to direct your attention

21 to paragraph 18 of the plea agreement and that is -- starts

22 on page 5 and carries over to page 6. That paragraph has to

23 do with the -- with the defendant's agreement to waive

24 certain appeal rights and rights to have or to have a

11:05:03 25 post-conviction attack on the guilty plea and/or the

1 sentence in this case.

2 And do you understand, Mr. Kelly, that with the
3 exception of the circumstances listed in this paragraph 18,
4 that Kelly Plating is giving up its rights to appeal or to
11:05:28 5 have a collateral attack, and do you understand that the
6 rights that the company has to either appeal or to have a
7 collateral attack on the guilty plea or the sentence are
8 limited by this paragraph and limited to the circumstances
9 set forth in this paragraph?

11:05:48 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. And those circumstances
12 are that the defendant does retain the right to appeal with
13 respect to any punishment in excess of the statutory minimum
14 or any sentence to the -- that exceeds that -- to the extent
11:06:06 15 it exceeds the agreed upon sentence.

16 In addition, the defendant retains the right to
17 appeal or have a collateral attack with respect to claims of
18 ineffective assistance of counsel or prosecutorial
19 misconduct.

11:06:21 20 So do you understand, Mr. Kelly, that with those
21 exceptions, the company may not either appeal or file a
22 collateral attack?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Having discussed the
11:06:37 25 company 's rights with you, Mr. Kelly, do you still wish to

1 proceed with a guilty plea on behalf of the defendant
2 company?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: I will now ask Mr. Beeson on behalf of
11:06:51 5 the United States to review the portion of the plea
6 agreement in which the company stipulates to the facts that
7 relate to its conduct charged in the indictment; in other
8 words, the factual basis for the plea of guilty. After he
9 sets forth those facts, Mr. Kelly, I will ask you if you
11:07:08 10 agree with the facts that he has stated. I'll give you the
11 opportunity to correct any facts that you believe are
12 incorrect.

13 I will direct your attention to paragraph 19 of
14 the plea agreement where the facts are set forth so that you
11:07:23 15 can follow along there.

16 And, Mr. Beeson, I would ask you to pause after
17 each subparagraph so that I can ask Mr. Kelly if he agrees
18 with what you said.

19 MR. BEESON: Okay. Would you like me to read the
11:07:35 20 paragraphs individually, Your Honor?

21 THE COURT: Yes.

22 MR. BEESON: Okay. Paragraph 19-A provides the
23 defendant, Kelly Plating Company, an Ohio company -- an Ohio
24 corporation was the owner and operator of a metal plating
11:07:52 25 facility, abbreviated "the facility," located in Cleveland,

1 Ohio.

2 As part of the metal plating processes at the
3 facility, solutions of metal such as chromium, abbreviated
4 "chrome" and zinc were used. Therefore, the wastewater and
11:08:08 5 sludge generated at the facility also contained chrome and
6 zinc.

7 THE COURT: Mr. Kelly, do you agree with those
8 facts?

9 THE DEFENDANT: Yes, Your Honor.

11:08:16 10 MR. BEESON: Paragraph B provides the facility
11 discharged into the sewer system connected to the wastewater
12 treatment plant owned and operated by the Northeast Ohio
13 Regional Sewer District, abbreviated "NEORSD," an often
14 referred to as the westerly plant. After the wastewater
11:08:38 15 entered the westerly plant, it is treated and discharged
16 into Lake Erie.

17 THE COURT: Do you agree with those facts,
18 Mr. Kelly?

19 THE DEFENDANT: Yes, Your Honor.

11:08:46 20 MR. BEESON: Paragraph C provides, the NEORSD's
21 approved pretreatment program prohibited bypasses of any
22 pretreatment system without the prior written notification
23 and approval of NEORSD.

24 THE COURT: Do you agree with that statement?

11:09:04 25 THE DEFENDANT: Yes, Your Honor.

1 MR. BEESON: D, to reduce the amount of pollutants
2 discharged into the sewer system to an acceptable level, the
3 wastewater from the facility was processed using a
4 pretreatment system. The defendant had a permit to
5 discharge treated industrial wastewater to the NEORSD's
6 sewer system issued by NEORSD.

9 THE DEFENDANT: Yes, Your Honor.

0 MR. BEESON: E, T.W. worked for the defendant at
1 the facility and had several job duties. One of those
2 duties was as pretreatment operator. As pretreatment
3 operator, T.W.'s duties included operation and oversight of
4 the pretreatment system.

5 THE COURT: Do you agree with that statement,
6 Mr. Kelly?

7 THE DEFENDANT: Yes, Your Honor.

1 the pretreatment system on weekends.

2 THE COURT: Do you agree with those statements,
3 Mr. Kelly?

4 THE DEFENDANT: Yes, Your Honor.

11:10:38 5 MR. BEESON: G, on the following dates, T.W. and
6 another employee bypassed the pretreatment system at the
7 facility. Following -- or sampled -- sampling results of
8 the bypasses revealed the following approximate
9 concentrations of chrome and zinc.

11:10:58 10 THE COURT: And, Mr. Beeson, I don't know if it's
11 necessary to read every line of that chart. What I would
12 ask Mr. Kelly is whether he agrees with what you've stated
13 as well as what appears in paragraph 19-G as the dates of
14 discharge, the chrome concentrations which have numerical
11:11:23 15 concentrations for each date of discharge, and the zinc
16 concentrations with the numerical concentrations of -- for
17 each date of discharge that are listed in paragraph 19-G.

18 Do you agree with those, Mr. Kelly?

19 THE DEFENDANT: Yes, Your Honor.

11:11:45 20 MR. BEESON: Paragraph H, no employee of defendant
21 contacted NEORSD either before or after about these
22 bypasses.

23 THE COURT: And do you agree with that statement,
24 Mr. Kelly?

11:11:56 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Kelly, I'll now ask you if you
2 wish to make any changes in the facts as stated in paragraph
3 19 of the plea agreement?

4 THE DEFENDANT: No, Your Honor.

11:12:07 5 THE COURT: All right. Do you admit that the
6 facts stated in paragraph 19 are true?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Mr. Beeson, is there any
9 right or any procedural provision that I have failed to
11:12:19 10 account for prior to asking Mr. Kelly what the plea of The
11 Kelly Plating Company is?

12 MR. BEESON: No, Your Honor.

13 THE COURT: And, Mr. Valore, I would ask you the
14 same question?

11:12:28 15 MR. VALORE: No, Your Honor.

16 THE COURT: All right. Mr. Kelly, I'm now
17 prepared to receive the plea of The Kelly Plating Company.

18 Do you wish to confer with Mr. Valore before I ask
19 you what the plea is?

11:12:43 20 THE DEFENDANT: Guilty of Counts 1 and 2.

21 THE COURT: All right. We'll -- we'll get to that
22 in a second.

23 MR. VALORE: We don't need to confer, Your Honor.

24 THE COURT: Okay. And do you have any questions
11:12:51 25 of me before I ask you what the plea is?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Okay. Now that I have advised you of
3 the company's rights, Mr. Kelly, and have received evidence
4 as to the company's competence and your competence to
5 represent and speak on behalf of the company and as to the
6 factual basis for the plea, how does The Kelly Plating
7 Company plead to Counts 1 and 2 of the indictment; guilty or
8 not guilty?

9 THE DEFENDANT: Guilty, Your Honor.

11:13:20 10 THE COURT: And, Mr. Kelly, are you pleading
11 guilty on behalf of The Plating Company to the offenses
12 charged in Counts 1 and 2 because the company, Kelly Plating
13 Company, is, in fact, guilty of those offenses?

14 THE DEFENDANT: Yes, Your Honor.

11:13:32 15 THE COURT: Thank you. It is my finding that the
16 defendant, Kelly Plating Company, is fully competent to and
17 capable of entering an informed plea, and that Mr. Kelly, as
18 authorized corporate representative, is competent and
19 capable to speak on its behalf in entering an informed plea.

11:14:00 20 It is also my finding that The Kelly Plating
21 Company, through its authorized representative, is aware of
22 the nature of the charges brought against it and the
23 consequences of its plea, and that its plea of guilty to
24 Counts 1 and 2 of the indictment in this case is a knowing
11:14:14 25 and voluntary plea supported by an independent basis, in

1 fact, concerning each of the elements of the offenses
2 charged.

3 I, therefore, recommend that the district judge
4 approve the plea agreement, accept Kelly Plating Company's
11:14:28 5 plea and adjudge Kelly Plating Company guilty of the
6 offenses charged in Counts 1 and 2 of the indictment.

7 Mr. Kelly, the court will ask for a presentence
8 investigation report to be prepared prior to sentencing
9 unless counsel indicates that one should not be prepared in
11:14:47 10 this case. It is in the best interest of the company to
11 cooperate with the probation officer in furnishing
12 information for the presentence report since the report will
13 be an important factor in the court's decision as to what
14 the sentence will be.

11:14:59 15 The company and its counsel will have a right and
16 will have an opportunity to examine the report and to
17 comment on it at the time of sentencing.

18 Judge Pearson is the judge assigned to this case.
19 She will do the sentencing, and she has set the sentencing
11:15:18 20 hearing for December 11, 2014, at 11:30 a.m. That will
21 occur at the United States Courthouse in Youngstown, Ohio.

22 At this time, I think we have concluded the
23 matters required to be addressed at this hearing.

24 Mr. Beeson, is that correct?

11:15:38 25 MR. BEESON: That's correct.

1 THE COURT: Mr. Valore, is that correct?

2 MR. VALORE: I agree, Your Honor.

3 THE COURT: All right. And I thank counsel and

4 Mr. Kelly, as the representative, for his participation on

11:15:54 5 behalf of The Kelly Plating Company today.

6 MR. VALORE: Thank you very much, Judge.

7 MR. BEESON: Thanks, Your Honor.

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1 C E R T I F I C A T E

2

3 I certify that the foregoing is a correct transcript

4 from the record of proceedings in the above-entitled

5 matter.

6

7 s/Lori A. Callahan
8 Lori Ann Callahan, RMR-CRR
9 U.S. District Court, Suite 568
2 South Main Street
Akron, Ohio 44308
(330) 252-6022

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